

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

9 Soilworks, LLC, an Arizona corporation,) No. CV-06-2141-PHX-DGC
10 Plaintiff,) **ORDER**
11 vs.)
12 Midwest Industrial Supply, Inc., an Ohio,)
13 corporation authorized to do business in)
14 Arizona,)
15 Defendant.)

)

16 Defendants have filed a motion for reconsideration of the Court’s order (Dkt. #61)
17 denying their request for an extension of the discovery deadlines in this case. Dkt. #63.
18 Defendants describe the efforts they have undertaken to litigate this case and urge the Court
19 to grant the requested extensions. For the reasons set forth below, Defendants’ motion will
20 be denied.

21 As noted in the Court's previous order, the Court allocated sufficient time to prepare
22 this case for trial. The Court specifically advised the parties, both at the case management
23 conference and in the Case Management Order (Dkt. #28), that the deadlines were real and
24 that the Court would not be inclined to grant extensions. The parties permitted the expert
25 disclosure and fact discovery deadlines to pass without seeking an extension from the Court.
26 Although Defendants have now explained additional activity that was undertaken during the
27 discovery period, the Court cannot conclude that the parties were unable to complete their
28 discovery through reasonable diligence. Under the standards applied in the Ninth Circuit,

1 Defendants therefore have not established the good cause required to extend a scheduling
2 order under Rule 16(b) of the Federal Rules of Civil Procedure. *Johnson v. Mammoth*
3 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (“Rule 16(b)’s ‘good cause’ standard
4 primarily considers the diligence of the party seeking the amendment.”).

5 Defendants suggest that their interaction with the Court’s staff in connection with
6 Dkt. #36 led them to believe that they did not need the Court’s approval to privately agree
7 on discovery extensions. But the Court’s Case Management Order clearly explained the
8 circumstances under which the Court’s involvement was not required. Paragraph 3 set forth
9 limitations on length of depositions and amounts of written discovery, and then said: “The
10 limitations *set forth in this paragraph* may be increased by mutual agreement of the parties,
11 *but such an increase will not result in an extension of the discovery deadline set forth*
12 *below.*” Dkt. #28, ¶ 3 (emphasis added). The Court also specifically addressed this matter
13 during the case management conference and made the following statement: “I’m going to
14 leave paragraph 3 the way it is with some discovery limitations, but you can agree to exceed
15 those. You don’t need my agreement to do that. But your agreeing, of course, won’t affect
16 the discovery deadline.” (Court’s rough transcript.) Thus, the Court made clear that the
17 parties could agree to extend the length of a deposition or increase the number of
18 interrogatories, but that their agreements would *not* affect the discovery deadlines in this
19 case. The Court made equally clear that it would not be inclined to extend the deadlines. For
20 this reason the Court cannot accept Defendants’ suggestion that they believed they could
21 privately agree to extend the deadlines in this case.

22 In sum, the Court made clear that the deadlines in this case were real. Counsel
23 allowed those deadlines to pass without diligently pursuing discovery and without otherwise
24 seeking to extend the deadlines. The Court will not alter its previous order denying the
25 requested extensions.

26

27

28

1 **IT IS ORDERED** that Defendants' motion for reconsideration (Dkt. #63) is **denied**.

2 DATED this 18th day of March, 2008.

3
4
5 

6

7 David G. Campbell
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28